

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: THE CITY OF INDEPENDENCE; Buchanan County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2007-AQ-07
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**TO: FRANK BRIMMER
MAYOR
CITY OF INDEPENDENCE
3311 1ST STREET SE
INDEPENDENCE IA 50644**

I. SUMMARY

This administrative consent order (Order) is issued to resolve violations arising from the improper operation of a city tree burn site by the City of Independence (Independence). Pursuant to this Order, Independence hereby agrees to pay a penalty of \$8,000 within 30 days of the execution of this Order.

Any questions regarding this Order should be directed to:

Jon C. Tack, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-8889

II. JURISDICTION

This Order is issued pursuant to Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality) and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. The City of Independence operates a composting site (the site) near Jackson Street inside the city limits. Trees and tree trimmings are burned at the site by Independence.

2. On April 8, 1991, the Department received a complaint alleging that Independence was burning trees and tree trimmings within ¼ mile of residents and without supervision in violation of Iowa law. An inspection of the site was conducted on April 11, 1991. At that time, burning was occurring within ¼ mile of inhabited buildings, causing thick smoke to fill the neighborhood. There were two open gates at the site. No attendant was present. Foreign material such as wooden wire spools had been dumped into the burn pile. These violations were reported to Independence and a Notice of Violation was issued on April 16, 1991.

3. On October 25, 1993, the Department received a complaint alleging that Independence was burning trees and tree trimmings at the site without supervision. The complaint further alleged that the burning had been occurring for 12 days and that access to the site was not restricted. An inspection was conducted on November 3, 1993. On that date, there was a long pile of trees and tree trimmings stretching from the northeast corner of the site to the center of the site. The pile was smoldering. Large piles of leaves and leaf bags were intermingled in the burn pile. No one was supervising the site. While inspectors were on site, a resident arrived to dump leaves on the fire. The resident reported that he obtained the key to the gate from the fire department. Independence was directed to immediately remove all leaves and yard waste from the site. Independence was directed to only conduct tree burning in an area at least ¼ of a mile from residences (possibly the northeast corner of the site) and to have an attendant on site during any burning. A Notice of Violation was issued on November 15, 1993.

4. On February 10, 2005 the Department received a complaint alleging that Independence was conducting a brush clearing operation along a creek near 9th Avenue and 4th Street. The complaint alleged that Independence was burning brush by pouring fuel or oil on the brush piles and that four tires had been added to the pile. The complaint record notes that this was the third open burning complaint against Independence that had been investigated by the Department during the winter of 2004-2005. Tim Donnelly, Independence Public Works Director, was contacted by the Department and instructed to cease all illegal burning activity. A Notice of Violation was issued on February 21, 2005.

5. On July 12, 2005, Environmental Specialist Clark Ott observed smoke coming from the site. On July 15, 2005, Mr. Ott visited the site. He observed a large pile of burning trees and ashes, no access controls, and no supervision. The burn pile was located less than ¼ mile from inhabited buildings. Mr. Ott met with John Jack, a city employee. Mr. Jack indicated that the fire had been ignited on July 12th and had burned continuously since that date. Mr. Jack was informed that this activity constituted multiple violations of Iowa law. A Notice of Violation was issued on August 2, 2005.

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6. On October 21, 2005, Department staff met with Tim Donnelly, Independence Public Works Director, and Alan Johnson, City Administrator, at the site. It was determined that approximately 12 residences are within ¼ mile of the burn pile. Several compliance options were discussed but the city officials indicated that these options were unacceptable. This was the first occasion in which it was clearly determined that the entire site was within ¼ mile of residences. Although it is the duty of the city to make this determination, this was the first date on which the Department notified Independence of a site-wide prohibition.

7. On January 10, 2006, the Department received a complaint alleging illegal open burning at the site. The complaint was investigated on January 10, 2006. Department inspectors observed a large plume of smoke originating from the site. Upon arrival, no one was on site to supervise the fire. Three city employees arrived at the site during the inspection. The employees stated that they had been instructed to burn by Tim Donnelly, Independence Public Works Director. A Notice of Violation was issued on January 19, 2006.

8. On February 1, 2006, the Department met with Mr. Donnelly. Options for composting the tree waste were discussed. Independence estimates that compliance with applicable open burning regulations will cost approximately \$8,800 per year for labor, assuming the use of a county-owned chipper.

9. On July 25th and July 27th, the Department received information from residents living near the site. The residents indicate that burning at this site began prior to 1991 and was a regular occurrence through 2005. The residents report actual negative impacts suffered due to the failure to monitor or control the fires at this site.

10. The City of Independence has contracted with a company to provide processing services for tree waste deposited at the site and compliance has been achieved. The contract sets a base fee of \$12,000 per year plus additional charges for specified services and a fuel charge.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

2. Rule 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions).

3. The restrictions applicable to a government operated tree and tree trimming burn

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site are found at 567 IAC 23.2(3)"b" and include:

- the burning site is fenced and access is controlled;
- burning is conducted on a regularly scheduled basis and is supervised at all times;
- the burning site is limited to areas at least one-quarter mile from any inhabited building;
- rubber tires shall not be used to ignite trees and tree trimmings.

The above facts disclose violation of these provisions.

V. ORDER

THEREFORE, the Department orders and Independence hereby agrees to pay an administrative penalty in the amount of \$8,000 within 30 days of the execution of this Order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 567 IAC 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Independence has achieved a significant economic benefit from its illegal conduct. Costs avoided include disposal fees, labor, and hauling costs. The open burning of solid waste can reduce the volume of such waste by greater than 50 percent. In this case, the activity has been ongoing for at least 15 years. Based upon the estimates provided by Independence for labor costs alone, it is likely that Independence has avoided over \$100,000 in costs during the period of violation. In order to resolve this matter consensually, the Department has assessed \$3,000 for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. For the 17 days of violation documented by the Department, a maximum penalty of \$170,000 is authorized by the Code of Iowa. Assuming that the activity continued between 1993 and 2005, a penalty of several hundred thousand dollars is authorized by law. Open burning of solid waste results in the release of large amounts of

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particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. The open burning violations documented in this case occurred with ¼ mile of inhabited buildings and thereby threatened human health. In order to resolve this matter consensually, the Department has assessed \$3,000 for this factor.

c. Culpability. Independence was made aware of the applicable regulations at least as early as April of 1991. Although there appears to be some confusion over the issue of the applicable separation distance, other violations continued despite repeated compliance notifications. The site supervision requirements have never been complied with by Independence. In order to resolve this matter consensually, \$2,000 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.138 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Independence. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10 day of
April, 2007



CITY OF INDEPENDENCE

Dated this 20th day of
February, 2007

Field Office #1; Jon Tack; VII.C(1)